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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,042	07/18/2002	Jorg Peter Schur	von Kreislser.022	9726

110 7590 06/20/2005

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EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 06/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/070,042

Applicant(s)

SCHUR, JORG PETER

Examiner

NEIL LEVY

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12, 13, 19-21, 24, 30, 36, 43 and 46-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 13, 19-21, 24, 30, 36, 43, 46-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 is not further limited, as 4 opens the somewhat closed 3.

Claims 5, 47 are rejected under 35 U.S.C. 102(b) as being anticipated by Thirumalachar et al 4544666.

Tannins, tannic acid relatively non-toxic (col. 3, A) to plants and animals, but not to fungi, bacteria and other microbes (col. 1, 2) are provided in non-toxic carrier (A-2, col. 4, col. 6, 7 C.) the instant glycerol, and propylene glycol, by spraying wood plants (1-4, grapes) and (C-1) impregnation of trees. The does used are non-toxic (D-10). The compositions do not interfere with the function of protecting against microbes, thus added ingredients are not outside the instant claim language.

Claims 1-10, 13, 19-21, 24, 30, 36, 43, 46-48 are Blum et al 6207290 and Kuwazuru et al 565432 in view of Thirumalachar et al and Watt 5397385 and Bessette et al WO 98/54971 rejected under 35 U.S.C. 103(a) as being unpatentable over Blum, of record, applies reduced toxicity compositions in wood treating methods, showing benzyl alcohol, propylene glycol, isopropyl alcohol as solvents (col. 2, lines 63-line 3, col. 3) Tammine, Tannic acids and essential oils, menthyl anthranilate, menthyl salicylate for example, are also encompassed, at 0.01-10% (col. 4, lines 30-65). However, Blum intends to protect against insects, termites, algae, marine borers, in

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addition to bacteria and fungi (col. 5, lines 10-20) but with the instant application methods – impregnation or spraying (col. 5, lines 21-27).

Kuwazura of record, also treats wood, and again show equivalence of alcohols – ethanol, propaols, glycerol and propylene glycol, among others (col. 2, bottom).

However, Kuwazura was not particularly concerned with non-target species toxicity.

Thirumalachar, (above) however, is concerned with toxicity, and provides the instant compositions in low dose formulations non-toxic to plants, but effective to kill bacteria, fungus and other microbes. Thirumalachar at col. 7, tops shows any non-toxic carrier acceptable; examples show propylene glycol and glycerol.

Blum's less toxic components are inclusive of those compounds Thirumalacher (col. 1, 2) avoids as too toxic. The Blum carrier, however, are those of Thirumalacher and equivalents, Benzyl alcohol, propylene glycol, isopropyl alcohol, also shown by Kuwazura to include propanol thus obvious to one in the art to utilize as desired as equivalent carriers.

Watts also provides wood treating applications to protect against fungus, algae, and marine syanzmer (summary) with other compositions for wood treatments Woods focuses on essential oils, with benzylalcohol or isopropyl alcohol (col. 6, lines 19-27). Thus, one in the art wood find it obvious to utilize, as the instant unspecified essential oil, Watt's capsaicin in combination with other wood treatment compositions) inclusive of Blum, and Thirumalachar and Kuwazura, in order to optimize control of multiple wood pests with one treatment, application.

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Also, Bessette shows insert control with Benzyl alcohol and cinnamic alcohol, essential oils, and analogs (claims 35-39) thus obvious to include in composition where insects are to be protected against.

One having ordinary skill in the art would be motivated to perform this modification in order to reduce toxicity to operator. Besides Bessette, Thirumalachar poses the motivation to combine relatively non-toxic components to treat wood, inclusion of added carrier components are seen as equivalent solvents for the thirumalachar Tannin and Tannic acid actives. The compositions one would arrive at as use compositions are at the low end of applicants claimed concentrations. They would be as non-toxic as applicants, yet effective to control pests.

Thus, the artisan would find it obvious to prepare particular ingredient combinations, sizes, concentration and ratios of ingredients, depending upon the target species, desired number of applications, length of time for desired protection, ease of handling, degradation.

It has not clearly been established by objective showing of some additional unusual and/or unexpected results that the administration of the particular form of active, carrier of the particular form of structure to be treated, provides any greater level of prior art expectation as claimed. Further, applicant has showed no criticality as to the concentration or agent.

The selection of each ingredient and form thereof is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary the nature of each

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ingredient to optimize the effects desired, and the use ingredients for the functionality for which they are known to be used is not a basis for patentability.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made, desiring to utilize wood compositions, to use one of those known in the art, as exemplified by the primary references, with selection of the equivalent agents of any of the referenced compounds, at concentrations effective to kill microbes but not the operator. The instant invention provides well known old art recognized compounds, with well known art recognized effects, applied by well known art recognized methods to achieve control over pests as is well known in the art.

Applicant's arguments filed on 3/15/05 have been fully considered but they are not persuasive. Applicant's arguments have been considered in the above rejections; arguments for non-toxic are not persuasive – applicants' examples required high amounts of actives and were non-toxic to the intended microbial targets. The components used are shown in the cited art as toxic to plants. Consisting essentially is not seen as imparting distinction over the prior art, as would consisting. Prior art components do not interfere with the efficacy of the non-toxic compositions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (571) 272-0619. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Levy/LR
June 8, 2005

A handwritten signature in black ink, appearing to read "Neil S. Levy". The signature is fluid and cursive, with the first name "Neil" and last name "Levy" clearly distinguishable.

NEIL S. LEVY
PRIMARY EXAMINER